

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 19, 2006

Division: County Attorney

Bulk Item: Yes ☐ No ☒

Staff Contact Person: Bob Shillinger, x3474

AGENDA ITEM WORDING:

Presentation of settlement agreement in *Walgreens & Gadinsky v. Monroe County and Florida Keys Citizen's Coalition* (Intervenors), CA K 05-266.

ITEM BACKGROUND: The proposed agreement would settle an appeal to the Circuit Court from a denial of a major conditional use application by Walgreens to replace the Big Pine Scotty's building (@26,000 square feet) with a new, smaller building (@ 16,510 square feet) for a Walgreens store. As part of the settlement proposal, Walgreens has agreed to several concessions the details of which are set forth in the attached settlement agreement. If the County were to prevail in court, Walgreens would still have the right to renovate the existing Scotty's building to operate a drug store.

PREVIOUS RELEVANT BOCC ACTION: The Board gave conceptual approval to the settlement terms in January 2006; in September of 2005, the Board directed legal staff to explore a mediated settlement.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS: Approval.

TOTAL COST: NA

BUDGETED: n/a

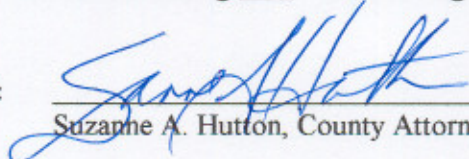
COST TO COUNTY: NA

SOURCE OF FUNDS: n/a

REVENUE PRODUCING: Yes ☐ No ☒ **AMOUNT PER MONTH** n/a **Year** n/a

APPROVED BY: County Atty ☐ OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL:


Suzanne A. Hutton, County Attorney

DOCUMENTATION: Included ☒ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # _____

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR MONROE COUNTY, FLORIDA

WALGREEN'S COMPANY and
GADINSKY REAL ESTATE, LLC,

CASE NO. 44-2005-CA-266-K
JUDGE RICHARD G. PAYNE

Petitioners,

vs.

MONROE COUNTY,

Respondent,

and

FLORIDA KEYS CITIZENS COALITION,

Intervenor.

SETTLEMENT AGREEMENT

THIS AGREEMENT has been entered into between Petitioners, Walgreen's Company and Gadinsky Real Estate, LLC, and Respondent, County of Monroe, a governmental entity.

WHEREAS, the parties desire to amicably resolve all issues between them relating to this litigation, and

WHEREAS, the parties further agree that it is in their best interest to terminate the litigation so as to avoid further expense and delay by entering into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the

parties agree as follows:

1. The Monroe County Growth Management Division shall issue to Walgreen's Company a Conditional Use Development Order approving the Major Conditional Use Application filed by Scotty's, Inc., to demolish an existing Scotty's hardware store on Big Pine Key and construct in its place a 16,510 square foot Walgreen's pharmacy with drive-through pharmacy window, with the following conditions:
 - A. Prior to the issuance of the Certificate of Occupancy, signs shall be posted on the access driveways from Key Deer Boulevard and US Highway 1 that limit the access of delivery vehicles only through the Key Deer Boulevard driveway.
 - B. Prior to issuance of a building permit, the transplantation plan must be revised to delete the removal of two threatened Paurotis Palms.
 - C. Prior to issuance of a building permit, the surface water management plan shall be approved by the South Florida Water Management District.
 - D. Prior to issuance of a building permit, the Florida Department of Health shall approve the Wastewater Treatment Plan.
 - E. Prior to issuance of a building permit, a Fire Protection Plan shall be approved by the Monroe County Fire Marshal.
 - F. The Keys Energy Services (KEYS) shall determine load requirement based on the review of a complete set of plans and approval shall be received prior to the issuance of a building permit.
 - G. The architectural standards adopted for Big Pine Key shall be incorporated into the building design in collaboration with and subject to the approval of the Monroe County Director of Planning.
 - H. The onsite traffic patterns, including the addition of a perimeter road and integrated bike path, shall be reconfigured as depicted on the site plan attached hereto and made a part hereof.

- I. The property owner shall be prohibited from applying for an alcoholic beverage permit for a period of two (2) years commencing from the date of issuance of the Conditional Use Development Order.
 - J. The freestanding sign shall be reduced in size so as to be no larger than the CVS pharmacy freestanding sign on Big Pine Key.
 - K. Only native vegetation, as approved by the County Biologist, shall be utilized in the landscape buffers.
 - L. Only cutoff lighting shall be utilized and located so as to prevent spillover on to neighboring residential uses.
 - M. If desired by Monroe County, the proposed sewage treatment plant shall be increased in size to accommodate hookup by neighboring uses, subject to appropriate governmental approvals. The expense of up-sizing, connection and increased operating and maintenance expenses shall be borne by the neighboring uses.
- 2. Upon issuance of the Conditional Use approval, Walgreen's Company shall be permitted to apply for all necessary building permits for construction of the Walgreen's pharmacy, consistent with the terms of the Conditional Use approval. Monroe County Growth Management Division shall process the application[s] in the normal course and issue the requisite building permits upon a determination that the application[s] are consistent with the Conditional Use approval.
 - 3. Upon issuance of the Conditional Use approval, Walgreen's Company shall file with the Court a Notice of Voluntary Dismissal of this action with prejudice.
 - 4. The parties shall exchange mutual General Releases in the form customarily utilized by attorneys in connection with litigation in this County.

5. Each party shall bear its own attorneys fees and costs in connection with this litigation. In the event it becomes necessary for either party to commence legal proceedings to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees and costs in connection with such action.

By entering into this Agreement, the parties are not acknowledging the merits or lack of merits of these proceedings. Rather, the parties are entering into this Agreement for the purpose of avoiding further expense and delay inherent in litigation of this nature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day of April 2006.

WALGREEN'S COMPANY

Florida

By: _____,
President

GADINSKY REAL ESTATE, LLC,
a Florida limited liability company

By: _____
Seth Gadinsky, Managing Member

COUNTY OF MONROE, a
political
subdivision of the State of

By: _____
Charles "Sonny" McCoy, Mayor

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT B. SHILLINGER, JR.
ASSISTANT COUNTY ATTORNEY
Date 4-10-06

